

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Giansante	Team: Squad #2	CCRB Case #: 201403978	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 03/28/2014 12:30 AM	Location of Incident: Summit Avenue and West 166th Street	Precinct: 44	18 Mo. SOL 9/28/2015	EO SOL 9/28/2015	
Date/Time CV Reported Fri, 04/18/2014 4:02 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 04/24/2014 6:25 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Anderson Ortiz	26151	949424	044 PCT
2. POM Sean Kelly	04838	949162	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DTS Eric Miller	3190	944812	044 PCT
2. POM James Garcia	17532	950469	044 PCT
3. POM Steven Cruver	11884	950250	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Sean Kelly	Force: PO Sean Kelly used physical force against § 87(2)(b)	
B.POM Anderson Ortiz	Force: PO Anderson Ortiz used physical force against § 87(2)(b)	
C.POM Sean Kelly	Discourtesy: PO Sean Kelly spoke rudely to § 87(2)(b)	

Case Summary

On April 18, 2014, § 87(2)(b) filed the following complaint by telephone with IAB on behalf of his stepson § 87(2)(b) generating original log number 2014-13642 (encl. 1a-1b). The CCRB received the complaint on April 24, 2014.

On March 28, 2014, at approximately 12:15 a.m., § 87(2)(b) was walking east on West 166th Street in the Bronx with two acquaintances, § 87(2)(b) and § 87(2)(b). When he reached the intersection with Summit Avenue, § 87(2)(b) heard someone yell, "Police!" The group was approached by PO Sean Kelly, PO Anderson Ortiz, and Det. Eric Miller of the 44th Precinct. § 87(2)(b) allegedly removed a firearm from his pants and threw it under a parked car. PO Kelly allegedly punched § 87(2)(b) in the face once before handcuffing him, twice after he was handcuffed, and again when he placed § 87(2)(b) in a police vehicle (**Allegation A**). PO Ortiz also allegedly punched § 87(2)(b) in the face (**Allegation B**). PO Kelly also allegedly said to § 87(2)(b) "Shut the fuck up" (**Allegation C**). § 87(2)(b) later escaped from the police vehicle while still handcuffed behind his back and ran nearly a block before PO Kelly tackled him. As § 87(2)(b) lay on the ground, PO Kelly allegedly punched his face three times and kicked his face once (**Allegation A**). PO Ortiz allegedly kicked § 87(2)(b) in the left leg (**Allegation B**). § 87(2)(b) was arrested for § 87(2)(b) (encl. 8d-8f).

Mediation, Civil and Criminal Conviction History

The case was ineligible for mediation as § 87(2)(b) was arrested, § 87(2)(b) [§ 87(2)(b)] [§ 87(2)(c)]

On § 87(2)(b), § 87(2)(b) and his mother, § 87(2)(b) filed a Notice of Claim with the City of New York claiming § 87(2)(b) injuries and seeking \$1.2 million as redress (encl. 20a-20c). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer Histories

- This the first CCRB complaint filed by § 87(2)(b) (encl. 0c). § 87(2)(b) has no previous CCRB complaints (encl. 0d).
- PO Kelly has been a member of the NYPD for 4 years and has had five previous CCRB allegations involving two cases with no substantiated allegations (encl. 0a).
- PO Ortiz has been a member of the NYPD for 4 years and has had two previous CCRB allegations involving two cases with no substantiated allegations (encl. 0b)

Findings and Recommendations

Allegations Not Pleaded

- **Force:** § 87(2)(b) alleged that an officer threw him to the ground before and after handcuffing him. § 87(2)(b) did not provide a sworn statement, and § 87(2)(b) denied seeing officers use any force against § 87(2)(b) § 87(2)(g)
- **Discourtesy:** § 87(2)(b) alleged that officers said, "You fucking assholes!" when apprehending him and § 87(2)(b) § 87(2)(b) did not provide a sworn statement and § 87(2)(b) did not make the same allegation, § 87(2)(g)
- **Frisk and Search:** § 87(2)(b) alleged that an officer frisked him and entered his pockets after he was handcuffed. § 87(2)(b) did not provide a sworn statement and § 87(2)(b) did not make the same allegation, § 87(2)(g)

Explanation of Subject Officer Identification

The investigation determined that the anticrime team that apprehended § 87(2)(b) consisted of Det. Miller, PO Kelly, and PO Ortiz. A second anticrime team, consisting of PO James Garcia and PO Steven Cruver, arrived later to transport § 87(2)(b) and § 87(2)(b) in their vehicle. § 87(2)(b) appears to have confused PO Kelly and PO Garcia, as he described the officer who apprehended him and first punched him as a Hispanic man with a red blotch on his face. PO Garcia is a Hispanic man with a red blotch on his left cheek and forehead (encl. 15d) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

PO Ortiz admitted to being the officer who followed PO Kelly in pursuit of § 87(2)(b) after he escaped from their vehicle and aided in his re-apprehension. In addition, § 87(2)(b) stated that his mother learned this officer's name as "Ortiz." § 87(2)(g)

§ 87(2)(b)

Recommendations

- **Allegation A—Force: PO Sean Kelly used physical force against § 87(2)(b)**
Allegation B—Force: PO Anderson Ortiz used physical force against § 87(2)(b)

§ 87(2)(b) provided a telephone statement (encl. 4a) and was interviewed at the CCRB (encl. 4c-4e). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b) During his interview, he recounted that he stopped and put his hands up when officers approached, and that he began bending down when PO Kelly told him to get on the ground. He alleged that PO Kelly punched him in the right eye, which caused him to fall to the ground. He struck his forehead on the ground which caused a laceration. PO Kelly handcuffed him and punched him again on the right cheekbone. PO Kelly picked him up and punched him a third time on the right side of his face. § 87(2)(b) recounted the incident multiple times and described only PO Kelly as using force against during the initial apprehension. He later stated that PO Ortiz also punched him in the face at this time. PO Kelly placed § 87(2)(b) in the rear driver's side of the vehicle and punched or pushed the left side of his face. § 87(2)(b) first stated that PO Kelly struck the right side of his face but amended his allegation when the investigator asked how PO Kelly could have struck the right side of his face if he was standing to § 87(2)(b) left. In his telephone statement, § 87(2)(b) similarly alleged that PO Kelly first punched him in the face, and then punched him again while he was on the ground. However, he also alleged that PO Kelly kicked his face at this time. He also stated that another officer handcuffed him, and that once the officers stood him up, PO Ortiz punched him in the face. He also alleged that PO Ortiz punched him again in the face as he was led to the vehicle.

§ 87(2)(b) admitted to escaping from the vehicle while handcuffed behind his back and running west to the intersection of West 166th Street and University Avenue. He stopped and PO Kelly tackled him. § 87(2)(b) fell facedown and struck his forehead on the ground. PO Kelly punched the right side of his face three times and kicked it once. He also struck § 87(2)(b) on his back and arms. PO Kelly picked him up and PO Ortiz kicked his left leg once. § 87(2)(b) recounted the incident multiple times before mentioning that he had a scab on the inside of his lower lip from being punched in the mouth. He could say only that it happened when the officers were beating him up and that he could not recall every single time he was punched. In his telephone statement, he alleged only that PO Kelly punched him in the face once after tackling him, and stated that PO Ortiz kicked him in the left knee twice.

§ 87(2)(b) arrest photograph shows a small red mark in the center of his forehead, swelling about his lips, and swelling and scratches about his right eye (encl. 11a). § 87(2)(b) provided photographs taken in the days after the incident showing swelling and bruising on his right eyelid and abrasions on his right eyebrow (encl. 3b-3g).

§ 87(2)(b) pre-arraignment screening form shows that he had swelling about his left eye and a laceration. He went to § 87(2)(b) on the night of § 87(2)(b) after he was released from custody. He complained of pain and blurry vision in his right eye, pain in his left knee, and back pain. An examination noted that § 87(2)(b) had forehead abrasions, right periorbital swelling and right-sided photophobia, a blister on his lower lip, and swelling in his left knee. X-rays of his left knee showed no fracture or dislocation and normal soft tissues, with trace fluid in the joint. A CAT scan of his right eye showed mild soft tissue swelling with no fracture or dislocation. He was seen by an ophthalmologist at the hospital on § 87(2)(b) and reported that he was hit in the right eye with a fist. He was diagnosed with decreased vision secondary to tear film dysfunction.

§ 87(2)(b) knew the two men walking with him as § 87(2)(b) and § 87(2)(b). The investigation identified them as § 87(2)(b) and § 87(2)(b). The investigation was unable to contact § 87(2)(b). § 87(2)(b) provided a telephone statement (encl. 5a-5b) but did not appear for an interview. § 87(2)(b) recounted that he saw a Hispanic male officer in his 30s who was 6'0" tall and muscular punch § 87(2)(b) in the face approximately 4-5 times. The same officer handcuffed § 87(2)(b). As § 87(2)(b) lay on the ground, the officer punched him in the face approximately 4-5 times and kicked him twice in the side. The officer also punched § 87(2)(b) once in the head while placing him in the vehicle. § 87(2)(b) did not see § 87(2)(b) escape from the vehicle nor did he see officers apprehend him again. § 87(2)(b) claimed that he, and not § 87(2)(b) possessed the handgun and threw it under a parked car. All three officers who apprehended § 87(2)(b) stated that he was the one who threw the gun under a car, and Det. Miller vouchered the black Beretta pistol he recovered as belonging to § 87(2)(b) (encl. 11g).

PO Kelly recounted that, after seeing § 87(2)(b) throw a handgun under a parked car, he ordered § 87(2)(b) to get on the ground multiple times (encl. 6d-6f). § 87(2)(b) did not comply and PO Kelly grabbed § 87(2)(b) shoulder and brought him to the ground on his stomach. § 87(2)(b) attempted to raise himself with a push-up motion and PO Kelly held him down and handcuffed him. § 87(2)(b) did not physically resist in any other way and PO Kelly denied using any other force to apprehend § 87(2)(b). He denied striking § 87(2)(b) in the face, denied kicking him, and denied seeing any other officer use any physical force against him. No other officers assisted PO Kelly in handcuffing § 87(2)(b). PO Kelly lodged § 87(2)(b) in the vehicle but denied striking him while doing so. Once lodged in the backseat, § 87(2)(b) began striking his head against the front passenger seat and rocking back and forth. PO Kelly thought § 87(2)(b) might be an EDP. PO Kelly pursued § 87(2)(b) when he escaped from the vehicle and admitted to tackling him as he neared the intersection of West 166th Street and University Avenue. He recounted that he grabbed either § 87(2)(b) arm or the handcuffs and that they both fell to the ground. § 87(2)(b) fell forward and his face struck the ground because he was handcuffed. PO Kelly fell on his right side and sustained minor scratches. § 87(2)(b) had scratches on his face but was not bleeding. He squirmed and kicked when PO Kelly attempted to pick him up and PO Ortiz aided in bringing § 87(2)(b) back to the vehicle.

PO Ortiz did not see PO Kelly handcuff § 87(2)(b) but denied seeing PO Kelly use any force against § 87(2)(b) or doing so himself (encl. 7e-7g). He watched PO Kelly lodge § 87(2)(b) in the vehicle and denied seeing him strike § 87(2)(b) in the process. He saw the rear passenger door open and saw § 87(2)(b) fall out of the vehicle on his back. PO Ortiz lost sight of § 87(2)(b) and PO Kelly as they ran toward University Avenue. He followed and saw PO

Kelly struggling to bring § 87(2)(b) to his feet. PO Kelly stood behind § 87(2)(b) and held his arms. § 87(2)(b) moved around and resisted PO Kelly. PO Ortiz attempted to grab § 87(2)(b) legs and § 87(2)(b) kicked him in the stomach. The officers eventually gained control of § 87(2)(b) and carried him back to the vehicle. PO Ortiz denied punching or kicking § 87(2)(b) during this time and denied seeing PO Kelly do so. He saw scratches on § 87(2)(b) face later at the stationhouse.

Det. Miller recounted that PO Kelly ordered § 87(2)(b) to get on the floor but ended up handcuffing him as he leaned against a parked car (encl. 8m-8o). He denied seeing PO Kelly use any force in apprehending § 87(2)(b). He denied seeing PO Kelly punch § 87(2)(b) in the face when he placed him in the vehicle. Det. Miller saw § 87(2)(b) escape from the vehicle but did not see PO Kelly apprehend him and could not recall if PO Ortiz aided in the apprehension. When PO Kelly returned with § 87(2)(b) he said that § 87(2)(b) had fallen on his face. Det. Miller observed scratches on § 87(2)(b) face and a red mark on his forehead.

§ 87(2)(g)

§ 87(2)(g)

- **Allegation C—Discourtesy: PO Sean Kelly spoke rudely to** § 87(2)(b)

In his in-person statement, § 87(2)(b) alleged that PO Kelly said, “Shut the fuck up,” when he handcuffed him. In his telephone statement, § 87(2)(b) alleged that it was who PO Ortiz who made the statement. § 87(2)(b) did not corroborate this allegation and alleged instead that officers said, “You fucking assholes.”

PO Kelly could not recall if he said, “Shut the fuck up.” When asked if he used any profanity during the incident, he replied, “Not that I remember.” PO Ortiz and Det. Miller denied hearing PO Kelly make the statement and denied doing so themselves.

§ 87(2)(g)

Pod: 2

Investigator:	_____	<u>Daniel Giansante</u>	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date